

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ERIK THOR TROVE §
VS. § CIVIL ACTION NO. 1:21cv616
DAVID GUTIERREZ §

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Erik Thor Trove, proceeding *pro se*, filed the above-styled civil rights lawsuit pursuant to 42 U.S.C. § 1983 against David Gutierrez. The Court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable orders of this Court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the case be dismissed for failure to state a claim upon which relief may be granted.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation. The Court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

In his complaint, plaintiff asserted he had been improperly denied release on parole. The magistrate judge concluded that as plaintiff had no liberty interest in being released on parole, he had failed to state a claim upon which relief may be granted. The Court agrees with this conclusion.

In his objections, plaintiff faults the magistrate judge for failing to consider his assertion that he should be released on mandatory supervision. However, a careful review of plaintiff's complaint fails to reveal any contention that plaintiff has been improperly denied release on mandatory supervision.

In light of plaintiff's *pro se* status, the Court will construe the objections to amend the complaint to include a claim regarding being improperly denied release on mandatory supervision. However, this additional claim does not entitle Plaintiff to relief in this matter. Plaintiff asks the

Court to order that he be released from Texas custody, which he states would result in him being transferred to the Bureau of Prisons to serve a federal sentence. Such relief is not available in a civil rights lawsuit. It is only available via a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

ORDER

Accordingly, plaintiff's objections [Dkt. 76] are OVERRULED. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge [Dkt. 74] is ADOPTED. A final judgment shall be entered dismissing this lawsuit. The dismissal is without prejudice to petitioner's ability to file a petition for writ of habeas corpus contesting the failure to release him on mandatory supervision.

SIGNED this 14th day of June, 2023.



Michael J. Truncale
United States District Judge